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**CORRECTED BRIEF FOR APPELLANTS**  
**IN RE PHILIP R. THRIFT and CHARLES T. HEMPHILL** **U.S. PATENT & TRADEMARK OFFICE**

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*United States Court of Appeals*  
*For the Federal Circuit*

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**01-1445**

**(Serial no. 08/419,229)**

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**IN RE PHILIP R. THRIFT and CHARLES T. HEMPHILL**

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**APPEAL FROM A DECISION OF THE BOARD OF PATENT APPEALS**  
**AND INTERFERENCES DATED FEBRUARY 28, 2001**

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## **CERTIFICATE OF INTEREST**

Pursuant to Rule 47.4 of this Court, counsel for Appellants furnish the following list:

(1) The full names of every party represented by the attorneys in the case are:

Philip R. Thrift

Charles T. Hemphill

(2) The name of the real party in interest is: Texas Instruments Incorporated

(3) The names of all law firms whose partners or associates that have appeared for the party in the lower tribunal or are expected to appear for the party in this Court are:

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### **STATEMENT OF RELATED CASES**

Pursuant to Rule 47.5 of this Court, counsel for Appellants state: (1) no other appeal in or from the same civil action or proceeding in the lower court or body was previously before this or any other appellate court under the same or similar title; and (2) no cases are known to counsel to be pending in this or any other court that will directly affect or be directly affected by this Court's decision in the pending appeal.

### **STATEMENT OF JURISDICTION**

Pursuant to Rule 47.6 of this Court, counsel for Appellants state that the jurisdiction of this Court is based:

(a) on 35 U.S.C. 134, the statutory basis of Appellant's appeal to the Board of Patent Appeals and Interferences;

(b) on 35 U.S.C. 141 to 144, the statutory basis of Appellant's appeal to this Court; and

(c) on 35 U.S.C. 142 and 37 CFR 1.301, 1.302 and 1.304 in accordance with which a timely notice of appeal was filed and served.

## **STATEMENT OF THE ISSUES**

The sole legal issue before the Court is whether the U.S. Patent and Trademark Office (hereinafter PTO or “Patent Office”) Board of Patent Appeals and Interferences (hereinafter “the Board”) erred in holding the invention, as defined in Claims 1-19, would have been obvious to one of ordinary skill in the art within the meaning of 35 USC 103 over a combination of the Schmandt and Stefanopoulos references. The subissues are:

A. Did the PTO fail to provide evidence of key limitations of independent Claims 11 and 14 within the prior art thereby proving that the factual findings underlying the Board's decision regarding Claims 11 and 14 (and Claims 12, 13 and 15-19 through claim dependency) are not supported by substantial evidence?

B. Is there substantial evidence in the record to support the Board's determination that the Examiner has met his burden of making out a prima facie case of obviousness of Claims 1-10 and 11-19 (in the event the arguments presented in argument A above are deemed by this Court insufficient to justify reversal of the Board's Decision regarding Claims 11-19) over a combination of the Schmandt and Stefanopoulos references?

## **STATEMENT OF THE CASE AND THE FACTS**

### **1. Procedural History**

This is an ex parte appeal from the Board of Patent Appeals and Interferences (hereinafter the Board) Decision on Appeal dated February 28, 2001 (A9-A20) and corresponding Decision on Request for Reconsideration dated April 24, 2001 (A1-A8) in the application of Philip R. Thrift and Charles T. Hemphill, Serial Number 08/419,229 filed April 10, 1995.

The Examiner issued his first Office Action on August 7, 1996 (A48-A59). Claims 1-19 were rejected under 35 U.S.C. § 103 as being unpatentable over Stefanopoulos et al., (5,333,237) and in view of Schmandt et al., ("Augmenting a Window System with Speech Input", Computer Magazine, 8/90, Vol. 23, Issue 8, pages 50-56). Appellants amended Claims 1-5, 7-9 and 11 to overcome the references in an Amendment submitted under 37 C.F.R. § 115 on June 14, 1997 (A60-A64).

The Examiner issued his Final Rejection on March 27, 1997 (A66-A71). Claims 1-19 were once again rejected under 35 U.S.C. § 103 as being unpatentable over Stefanopoulos et al., (5,333,237) and in view of Schmandt et al.,

("Augmenting a Window System with Speech Input", Computer Magazine, 8/90, Vol. 23, Issue 8, pages 50-56). Appellants submitted a response under 37 C.F.R. § 116 on May 12, 1997 (A72-A75), in which they requested reexamination and reconsideration. The Examiner held the request for reconsideration to be not persuasive in an Advisory Action dated June 9, 1997 (A76-A77).

Appellants filed a Notice of Appeal on June 27, 1997 (A78) and their Appeal Brief to the Board on August 21, 1997 (A79-A92). The Board issued its Decision on Appeal on February 28, 2001 (A-9-A20), affirming the Examiner's rejection of Claims 1-19.

Appellants filed a Request Pursuant to 37 C.F.R. 1.197(b) for Reconsideration of the Board of Appeals Decision on March 15, 2001 (A109-A123). The Board on April 24, 2001 issued a Decision on Request for Rehearing (A1-A8) in which the Board states they reconsidered their Decision of February 28, 2001 in light of Appellants' comments in the Request for Rehearing but declined to make any changes in their prior Decision.

## 2. Summary of the Invention

### a) Background



The Internet is the largest network of computer systems in the world. Technically, it's the global network that connects huge numbers of networks to one another. The Internet was initially implemented by the government as a network of military computers, defense contractors, and universities performing defense research. The original agency in charge of the Internet was the Advanced Research Procurement Agency (ARPA) and the network became known as the ARPANET. It mainly allowed sharing of information in the research being performed between the various sites, but also gave the government a means to research communication security and integrity in conditions like atomic attacks and associated electromagnetic effects. However, the Internet has evolved from a primarily defense oriented network, to a multipurpose network that connects almost every other kind of computer to the original ARPANET, and thus defining the Internet.

Currently, the Internet links together the massive online service bureaus, such as CompuServe, Prodigy and America Online. It also links together hundreds of thousands of universities, government agencies, and corporations located in almost a hundred countries around the world. It reaches out to small offices, school rooms, and even individual homes.

From a user's perspective, the Internet is a truly massive resource of services. This network gives a user access to the world's largest online source of reference information, publicly distributed software, and discussion groups, covering virtually every topic one could reasonable imagine and an embarrassingly high number of topics that one could not. A subsection of the information contained by the computers on the Internet is called the World Wide Web (heretofore known as WWW or Web). The Web consists of a system of information sites that connect through a series of hyperlinks. Hyperlinks allow a user to use a cursor (mouse) to either point and click at a highlighted hyperlink (a highlighted hyperlink could be either text or a graphic) or enter a number corresponding to the highlighted link. Activating the highlighted hyperlink will access either another site, an audio clip, a video clip, a graphic, text based information or other types of multi-media information being developed every day.

The Web is also very dynamic. Hyperlinks are often created and destroyed on a minute-by-minute basis, and in fact, many hyperlinks are generated "on-the-fly" by computer software in response to a specific query for information, pointing to other information created just to answer the specific query. Any user gathering information or software used to assist gathering of information from the Internet needs to comprehend the highly dynamic and changing nature of hyperlinks.

This almost unlimited amount of information is very hard to digest without some sort of organization. A common software tool to organize the vast amount of information is called a "browser". This common software tool utilizes a common programming language that defines hyperlinks and the other information presented on the screen. The common programming language is called Hypertext Markup Language (HTML) (Hypertext is commonly referred to mean any hyperlink to multi-media information and will heretofore be interchangeable with hyperlink). There are several browsers being used for the World Wide Web. The National Center for Supercomputing Application (NCSA) has contributed a browser called NCSA Mosaic and was probably the most widely used browser at the time of the present invention. Other browsers have been developed by software companies and/or online service providers (e.g. Netscape, America Online, ...).

Most browsers offer the quite useful concept of a "hotlist" for a user to store and retrieve interesting or frequently used Uniform Resource Locations (URLs). After a short time, however, the hotlist can grow to the point where desired information becomes difficult to find. Besides the sheer number of items to examine, names of hotlist entries which seem perfectly reasonable at the time of entry do not seem to associate well with the corresponding page over days or weeks. Also, because of the dynamic nature of the Internet, most hotlists become

"stale" after a few days, or even a few minutes. It is often impractical to remember these dynamic links in a hotlist at all.

b) The invention

The present invention describes a speech interface to the Web that allows easy access to information and a growth path toward intelligent speech user agents. More particularly, the invention implements a novel interface that lets a user surf the Web by voice, including simple command control of the browser, a voice controlled hotlist that allows for syntactic variation, voice control of the dynamically changing set of link names encountered, and voice queries in the context of Smart Pages. Further, the ability to handle a flexible vocabulary, coupled with the ability to dynamically modify grammars (for a particular utterance or application - the set of words and phrases that a recognizer is constrained to recognize) allows the invention to support grammars particular to a Web page. These features are utilized to support a Speakable Hotlist, speakable links, and smart pages in the speech user agent. Voice activated control information is embedded in HTML pages as delivered on the World Wide Web. The voice control information is encoded in a grammar language and is interpreted by a Web client user-agent that translates user utterances into client actions. The user may also query the page about its functionality.

The invention contemplates a continuous, real-time, flexible vocabulary speech interface to the Web as an integral part of building an intelligent speech user agent. In addition to speakable control words (e.g., "scroll down", "back", etc.), internet browsers can be made speech aware in three distinct ways. First, the speech interface implements the idea of a Speakable Hotlist of Internet sites. Second, the speech interface includes Speakable Hyperlinks. This involves some lexical challenges (e.g., "DOW DOWN 1.68 at 11") and on-the-fly pronunciation generation and dynamic grammar modification. Furthermore, Smart Pages have been implemented, making it possible to associate a grammar with any Web page. In this way, the speech interface knows the language for that page, recognizes sentences using that language, and passes the result back to the page for interpretation. To avoid coverage issues, each Smart Page can briefly describe the language to the user. With this approach, knowledge can be effectively distributed rather than attempt to construct an omniscient user agent.

Like the hyperlinks themselves, the grammar associated with a Smart Page can be changed with the page itself, or be automatically generated simultaneously with the information and hyperlinks dynamically generated for the page. The new Smart Page grammar is immediately available to the person browsing the newly generated page using the present invention.

In one embodiment, the invention is a voice activated hypermedia system using grammatical metadata, the system comprising: a speech user agent; a browsing module; and an information resource located on a computer network wherein the speech user agent facilitates voice activation of the network browsing module to access the information resource. The system may include: embedded intelligence in hypermedia source; a means for processing the actions of a user based on the embedded intelligence; a means for returning a result of the action to the user. In addition, the hypermedia source may be an HTML page or an instructional module for communicating allowed actions by a user. The system may also include embedded intelligence as a grammar or reference to a grammar. The grammar may be dynamically added to a speech recognizer. In addition, the actions can come from a speech recognizer. Furthermore, the system may include voice activated hypermedia links and intelligent modules that process information from the information resources for allowing actions from the user. Other devices, systems and methods are also disclosed.

### 3. The Claims

The following claims are under appeal:

1. A voice activated Hypermedia system using grammatical metadata, said system comprising:

- a. a speech user agent;
- b. a network browsing module; and
- c. an information resource located on a computer network wherein said speech user agent facilitates voice activation of said network browsing module to access said information resource.

2. The system of Claim 1, wherein said system further includes a grammar embedded in said hypermedia information resource.

3. The system of Claim 2, wherein said system further includes a means for processing the verbal directions of a user based on said grammar.

4. The system of Claim 3, wherein said system further includes a means for returning a result of said verbal directions to said user.

5. The system of Claim 2, wherein said hypermedia resource is a HTML page.

6. The system of Claim 1, wherein said system further includes an instructional module for communicating allowed actions by a user.

7. The system of Claim 2, wherein said embedded grammar is a smart page grammar.

8. The system of Claim 2, wherein said embedded grammar is a reference to a grammar located in said information resource.

9. The system of Claim 2, wherein said grammar is dynamically added to a speech recognizer.

10. The system of Claim 3, wherein said actions come from a speech recognizer.

11. A voice activated Hypermedia system using grammatical metadata, said system comprising:

- a. a speech user agent;
- b. a network browsing module;



- c. an information resource located on a computer network wherein said speech user agent facilitates voice activation of said network browsing module to access said information resource;
- d. a means for extracting a grammar from a hypermedia source on said information resource for future reference to said source;
- e. a means for modifying said grammar;
- f. a means for automatically producing an intelligent grammar from said information resource; and
- g. a means for processing said grammar to produce a reference to said hypermedia source.

12. The system of Claim 11, wherein said system further includes a means for tokenizing a title for addition into said grammar.

13. The system of Claim 11, wherein said system includes a means for dynamically adding said grammar to a speech recognizer.

14. A voice activated Hypermedia system using grammatical metadata, said system comprising:

- a. a speech user agent;

- b. a browsing module;
- c. an information resource; and
- d. a means for producing a grammar from textual representation of links to said information resource.

15. The system of Claim 14, wherein said system further includes a means for recognizing sentences from said grammar to follow said links to said information resource.

16. The system of Claim 14, wherein said system further includes a means for adding said grammars dynamically to said system.

17. The system of Claim 14, wherein said grammars further include word pronunciations.

18. The system of Claim 14, wherein said grammars further include multiple options for tokenization.

19. The system of Claim 17, wherein said system further includes a means for dictionary lookup.

## SUMMARY OF THE ARGUMENT

The Board erred in holding the invention, as defined in Claims 1-19, would have been obvious to one of ordinary skill in the art within the meaning of 35 USC 103 under a combination of the Schmandt and Stefanopoulos for the following reasons.

I. Claims 11-19 stand rejected as being obvious under 35 U.S.C. 103 over Stefanopoulos et al., in view of Schmandt et al. The Decision of the Board is fatally flawed because a reasonable mind would NOT accept the evidence presented in the record as being adequate to support the Board's conclusion that independent Claims 11 and 14 (and Claims 12, 13 and 15-19 through claim dependency) are obvious under 35 U.S.C. 103 over Stefanopoulos et al., in view of Schmandt et al.

The Examiner (and Board via its affirmance of the Examiner's rationale) fail to set forth any argument that **“a means for extracting a grammar from a hypermedia source on said information resource for future reference to said source”, “a means for modifying said grammar”, “a means for automatically producing an intelligent grammar from said information resource”** and **“a**

means for processing said grammar to produce a reference to said hypermedia", as required by Claim 11, and "a means for producing a grammar from textual representation of links to said information resource", as required by Claim 14, are disclosed in the prior art. The Examiner's only statement anywhere in the record (and adopted by the Board) is as follows: "the use of grammar is old and well known in the art of speech recognition as a means of optimization which is highly desirable" (Office Action dated August 7, 1996, page 5, lines 11-12)(A3, lines 11-12). The Examiner provides no evidence supporting his above statement, which must be viewed as supposition not supported by fact.

Even had the Examiner provided evidence supporting his above statement that "'use' of grammar is old and well known", he makes no such similar argument regarding "extracting a grammar" or "processing a grammar" or "producing a grammar". Indeed, the Examiner does not address the above-highlighted language of Claims 11 and 14, and even more unusual, the Examiner fails to address any aspect of Claims 11 and 14 in his Answer. "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). It is clear from the record that the Examiner did NOT consider all of the words in Claims 11 and 14 in judging the claims obvious over the prior art.

Further, even had the Examiner considered all of the words in Claims 11 and 14 in judging the claims obvious over the prior art, it is clear from the record that the cited prior art does not disclose the above-highlighted limitations of Claims 11 and 14. To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). It is clear from the above discussion that the evidence of record does NOT support the Examiner and Board's determination that all of the limitations of Claims 11 and 14 are taught or suggested by the references of record.

II. Claims 1-19 stand rejected as being obvious under 35 U.S.C. 103 over Stefanopoulos et al., in view of Schmandt et al. The Decision of the Board is fatally flawed because a reasonable mind would NOT accept the evidence presented in the record as being adequate to support the Board's conclusion that independent Claim 1 (and dependent Claims 2-10) and independent Claims 11 and 14 (and Claims 12, 13 and 15-19 through claim dependency)(in the event the arguments presented above in #I are deemed insufficient by this Court to justify reversal of the Board's Decision regarding Claims 11-19) are obvious under 35 U.S.C. 103 over Stefanopoulos et al., in view of Schmandt et al.

Independent Claims 1, 11 and 14 require and positively recite, "a **speech user agent**". Claims 11 and 14 further require and positively recite, "an information resource located on a computer network wherein **said speech user agent facilitates voice activation of said network browsing module to access said information resource**". The Examiner admits that Stefanopoulos does not teach or suggest a "speech user agent". The Examiner instead relies upon Schmandt for such teaching. The Examiner's determination is flawed for several reasons. First, while Schmandt discloses speech or voice to navigate in a windows environment, there is no evidence in the record that supports a determination that Schmandt's speech or voice is equivalent to Appellants' "speech user agent". Seeming to confirm the above, the Examiner even fails to make any specific argument that Schmandt's speech or voice is equivalent to Appellants' "speech user agent". Second, even were Schmandt to disclose a "speech user agent", it fails to teach or suggest "an information resource located on a computer network wherein **said speech user agent facilitates voice activation of said network browsing module to access said information resource**". Accordingly, Schmandt and Stefanopoulos do not disclose all of the elements of independent Claims 1, 11 and 14.

Even if, arguendo, the Schmandt and Stefanopoulos references were to disclose all of the elements of Claims 1, 11 and 14, the Examiner's motivation for a combination is fatally flawed for up to four reasons. First, Schmandt's "use of speech or voice to navigate in a windows environment" is not designed for use on the "Web" - it was designed to navigate a windows environment on an X windows server. Second, such access would not be "easy" since all of the locations would have to have been pre-identified and entered into a computer by the user implementing Schmandt's computer and voice templates would have to have been previously enrolled for the specific location(s) - which is not "easy". Third, Schmandt's "use of speech or voice to navigate in a windows environment" does NOT reduce manual, intervention [i.e., the use of keyboard], as suggested by the Examiner. Fourth, there is no teaching or suggestion in Schmandt that would lead one of ordinary skill in the art at the time of the invention to make the determination that Schmandt's speech interface is "user friendly".

Lastly, there is no reasonable expectation that a combined Schmandt/Stefanopoulos apparatus will produce the apparatus described by the Examiner in his motivation for combination of the references, without improperly relying upon Appellants' disclosure.

## ARGUMENT

- A) THE PTO's FAILURE TO PROVIDE EVIDENCE OF KEY LIMITATIONS OF INDEPENDENT CLAIMS 11 AND 14 WITHIN THE PRIOR ART PROVES THAT THE FACTUAL FINDINGS UNDERLYING THE BOARD'S DECISION REGARDING CLAIMS 11 AND 14 (and Claims 12, 13 and 15-19 through claim dependency) ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Examiner rejected independent Claims 11-19 as being obvious under 35 U.S.C. 103 over Stefanopoulos et al., in view of Schmandt et al. The Board subsequently affirmed the Examiner's rejection. Appellants respectfully submit that the Decision of the Board is fatally flawed, as set forth in the discussion below, and request this Court to reverse the Decision of the Board because a reasonable mind would NOT accept the evidence presented in the record as being adequate to support the Board's conclusion that independent Claims 11 and 14 (and Claims 12, 13 and 15-19 through claim dependency) are obvious under 35 U.S.C. 103 over Stefanopoulos et al., in view of Schmandt et al.

Independent Claim 11 requires and positively recites, a voice activated Hypermedia system using grammatical metadata, said system comprising: “a speech user agent”, “a network browsing module”, “an information resource located on a computer network wherein said speech user agent facilitates voice



activation of said network browsing module to access said information resource”,  
“a means for extracting a grammar from a hypermedia source on said  
information resource for future reference to said source”, “a means for  
modifying said grammar”, “a means for automatically producing an intelligent  
grammar from said information resource” and “a means for processing said  
grammar to produce a reference to said hypermedia”.

1. The Examiner failed to consider all of the words in Claims 11 and 14.

Regarding the highlighted portions of Claims 11 and 14, the Examiner's only statement anywhere in the record is as follows: "the use of grammar is old and well known in the art of speech recognition as a means of optimization which is highly desirable" (A53, lines 11-12). The Examiner provides no evidence supporting his above statement, which must be viewed as supposition not supported by fact. Even had the Examiner provided evidence supporting his above statement that "'use' of grammar is old and well known", he makes no such similar argument regarding "extracting a grammar" or "processing a grammar" or "producing a grammar". Indeed, the Examiner does not address the above-highlighted language of Claims 11 and 14, and even more unusual, the Examiner fails to address any aspect of Claims 11 and 14 in his Answer. "All words in a claim must be considered in

judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). It is clear from the record that the Examiner did NOT consider all of the words in Claims 11 and 14 in judging the claims obvious over the prior art.

2. There is no evidence in the record that all the limitations of Claims 11 and 14 are taught or suggested by the prior art.

Appellants respectfully submit that there is no evidence in the record that "a means for **extracting a grammar from a hypermedia source on said information resource for future reference to said source**", as required by Claim 11, is old and well known in the art and would be obvious to apply to the present invention. Indeed, the Examiner even fails to make an unsupported allegation that the above claim limitation is obvious.

Similarly, there is no evidence in the record for proving, that "a means **for modifying said grammar**", as required by Claim 11, is old and well know in the art and would be obvious to apply to the present invention. As with the above claim limitation, the Examiner even fails to make an unsupported allegation that the above claim limitation is obvious.

Further, there is no evidence in the record for proving, that "a means for **processing said grammar to produce a reference to said hypermedia**", as required by Claim 11, is old and well known in the art and would be obvious to apply to the present invention. As with the above claim limitation, the Examiner even fails to make an unsupported allegation that the above claim limitation is obvious.

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). It is clear from the above discussion that all of the limitations of Claim 11 are not taught or suggested by the Schmandt and Stefanopoulos references.

Even if, arguendo, all of the claims limitations were present, "obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, **absent some teaching or suggestion supporting the combination.** Under section 103, teachings of references can be combined **ONLY if there is some suggestion or incentive to do so.**" ACS Hosp. Systems, Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). Although couched in terms of combining teachings found in the prior art, the same

inquiry must be carried out in the context of a purported obvious "modification" of the prior art. **The mere fact that the prior art may be modified in the manner suggested by the Examiner and the Board does not make the modification obvious unless the prior art suggested the desirability of the modification.** In re Gordon, 733 F.2d at 902, 221 USPQ at 1127. Moreover, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed.Cir.1991). See also Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed.Cir.1985). The only purported motivation to combine the references to arrive at the invention of Claim 11 comes from the Examiner - NOT the prior art.

Independent Claim 14 requires and positively recites, a voice activated Hypermedia system using grammatical metadata, said system comprising: "a speech user agent", "a browsing module", "an information resource" and **"a means for producing a grammar from textual representation of links to said information resource"**.

Regarding the highlighted portions of Claim 14, the Examiner's only statement anywhere in the record is as follows: "the use of grammar is old and well

known in the art of speech recognition as a means of optimization which is highly desirable" (A54, lines 19-20). The Examiner provides no evidence supporting his above statement, which must be viewed as supposition not supported by fact. Even had the Examiner provided evidence supporting his above statement, he does not address the above highlighted language of Claim 14. Even more unusual, in his Answer, the Examiner fails to address any aspect of Claim 14. "All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). It is clear from the record that the Examiner did NOT consider all of the words in claim 14 in judging the claim obvious over the prior art.

Further, regarding Claim 14, there is no evidence in the record for proving, that **"a means for producing a grammar from textual representation of links to said information resource"**, is old and well known in the art and would be obvious to apply to the present invention. As with the Claim 11 limitations, the Examiner even fails to make an unsupported allegation that the above claim limitation is obvious.

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d

981, 180 USPQ 580 (CCPA 1974). It is clear from the above discussion that all of the limitations of Claim 14 are not taught or suggested by the Schmandt and Stefanopoulos references.

Even if, *arguendo*, all of the claims limitations were present, "obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, **absent some teaching or suggestion supporting the combination.** Under section 103, teachings of references can be combined **ONLY if there is some suggestion or incentive to do so."** ACS Hosp. Systems, Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious "modification" of the prior art. **The mere fact that the prior art may be modified in the manner suggested by the Examiner and the Board does not make the modification obvious unless the prior art suggested the desirability of the modification.** In re Gordon, 733 F.2d at 902, 221 USPQ at 1127. Moreover, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed.Cir.1991). See also Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138, 227 USPQ 543, 547

(Fed.Cir.1985). The only purported motivation to combine the references to arrive at the invention of Claim 14 comes from the Examiner - NOT the prior art.

Nevertheless, and in spite of the above deficiencies, the Board held that, in its view, the Examiner's reasoning is sufficient to shift the burden to Appellants to come forward with evidence and/or arguments to rebut the Examiner's position (A 17, lines 16-19). The Boards' rationale is as follows:

We note initially that independent Claims 11 and 14 are similar to independent Claim 1, discussed supra, **but adds limitations directed to the construction and extraction of grammar related features as part of the speech user agent** (A17, lines 4-7)(emphasis added).

The Examiner at pages 6-8 of the Answer, and at pages 3-7 of the Office action mailed August 7, 1996, paper no. 4, referenced in the Examiner's statement of the grounds of rejection, addresses the language of these claims and **provides a line of reasoning for asserting the obviousness or inherent nature of each of the claimed features**. In our view, the Examiner's reasoning is sufficient to shift the burden to Appellants to come forward with evidence and/or arguments to rebut the Examiner's position (A17, lines 4-19)(emphasis added).

Appellants point out with frustration that the Board made its above determination in spite of the fact that the Examiner failed to provide ANY line of reasoning for asserting the obviousness of the inherent nature of any - much less each - of the features of Claims 11 and 14 in his Answer, and in spite of the fact the only statement by the Examiner any where in the record even remotely related to the

above-highlighted elements is "the use of grammar is old and well known in the art of speech recognition as a means of optimization which is highly desirable" (A53, lines 11-12 and A54, lines 19-20).

Appellants submitted a Request Pursuant to 37 CFR 1.197(b) for Reconsideration of Board of Appeals Decision on March 15, 2001 (A109-A123), in which they responded to the Board's above-flawed analysis, alleging error in the Board's Decision which sustained the Examiner's obviousness rejection of Claims 11 and 14 (and Claims 12, 13, and 15-19 through claim dependency) (A114, line 1 - A120, line 21). Unpersuaded as to its error, the Board in its Decision on Request for Rehearing states:

On reconsideration of our Decision of February 28, 2001 in light of Appellants' comments in the Request for Rehearing, we find no error therein. We, therefore, decline to make any changes in our prior decision . . . . (A2, lines 7-11).

In proceedings before the Patent and Trademark Office, "the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art". In re Fritch, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (citing In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). "The Examiner can satisfy this burden only by showing some objective teaching in the prior art or



that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references”, In re Fritch, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992)(citing In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988)(citing In re Lallu, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)).

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest ALL the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In the present case, the first requirement of In re Vaeck has not been met since there is NO suggestion or motivation, either in the Stefanopoulos and Schmandt references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the combined reference teachings of Stefanopoulos and Schmandt to include the elements high lighted above in Claims 11 and 14. The second requirement of In re Vaeck has

not been met since there is NO reasonable expectation of success that the combination of Stefanopoulos and Schmandt will accomplish what the Examiner states the combination will accomplish. The third requirement of In re Vaeck has similarly not been met since the Stefanopoulos and Schmandt references themselves do NOT teach or suggest ALL the claim limitations.

This Court "reviews the ultimate legal determination of obviousness without deference", In re Dembiczak, 175 F.3d 994, 998, 50 USPQ 1614, 1616 (Fed. Cir. 1999); see also In re Zurko, 2001 U.S. App. LEXIS 17219 [\*10] (Fed. Cir. 2001). Further, this Court "reviews factual findings underlying the Board's determination for substantial evidence", In re Gartside, 203 F.3d 1305, 1311-16, 53 USPQ2d 1769, 1772-75 (Fed. Cir. 2000). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consol. Edison Co. v. NLRB, 305 U.S. 197, 229, 83 L. Ed. 126, 59 S. Ct. 206 (1938); see also Dickinson v. Zurko, 527 U.S. 150, 162, 50 USPQ2d at 1772-75 (1999)("Zurko III"); see also In re Zurko, 2001 U.S. App. LEXIS 17219 [\*10] (Fed. Cir. 2001). From the discussion above, it is clear that a reasonable mind would NOT accept the evidence presented in the record as being adequate to support the Board's conclusion that independent Claims 11 and 14 (and Claims 12, 13 and 15-19 through claim dependency since "if an independent claim is nonobvious under 35

U.S.C. 103, then any claim depending therefrom is nonobvious", In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)) are obvious under 35 U.S.C. 103 over Stefanopoulos et al., in view of Schmandt et al.

Appellants further point out that the Board even agrees that not all of the elements of Claims 11-19 are found in the prior art:

We do not dispute Appellants' contention that the applied references do not explicitly disclose several of the various features of Claims 11-19; however, Appellants' minimal arguments do not address the Examiner's position of obviousness or inherency with respect to the features recited in these claims (A18, lines 3-8).

As to Appellants' argument (Request, pages 6-11) directed to the "grammar" related features appearing primarily in appealed claims 5-19, we find no error in our finding that, when considering the entirety of the record in this application, the Examiner's line of reasoning was sufficient to shift the burden to Appellants to come forward with evidence to rebut the Examiner's position as to the inherency or obviousness of the claimed features (A6, lines 13-20).

With respect to the core factual findings regarding Claims 11-19, the Board cannot, as it has done in the present case, simply reach a conclusion based on its own understanding or experience -- or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings. To hold otherwise would render the process of appellate review for substantial evidence on the record a meaningless exercise. Baltimore & Ohio R.R. v. Aderdeen & Rockfish R.R. Co., 393 U.S. 87, 91-

92, 21 L. Ed. 2d 219, 89 S. Ct. 280 (1968)(rejecting a determination of the Interstate Commerce Commission with no support in the record, noting that if the Court were to conclude otherwise, "the requirement for administrative decisions based on substantial evidence and reasoned findings -- which alone make effective judicial review possible -- would become lost in the haze of so-called expertise). Accordingly, Appellants respectfully request this Court to reverse the Decision of the Board affirming the rejection of Claims 11-19.

- B) THE RECORD DOES NOT SUPPORT THE BOARD'S DETERMINATION THAT THE EXAMINER HAS MET HIS BURDEN OF MAKING OUT A PRIMA FACIE CASE OF OBVIOUSNESS OF CLAIMS 1-10 AND 11-19 (in the event the arguments presented above in #1 are deemed by this Court insufficient to justify reversal of the Board's Decision regarding Claims 11-19).

The Examiner rejected independent Claims 1-19 as being obvious under 35 U.S.C. 103 over Stefanopoulos et al., in view of Schmandt et al. The Board subsequently affirmed the rejection. Appellants respectfully submit that the Decision of the Board is fatally flawed, as set forth in the discussion below, and request this Court to reverse the Decision of the Board because a reasonable mind would NOT accept the evidence presented in the record as being adequate to support the Board's conclusion that independent Claims 1, 11 and 14 (and Claims

2-10, 12, 13 and 15-19 through claim dependency) are obvious under 35 U.S.C.

103 over Stefanopoulos et al., in view of Schmandt et al.

In proceedings before the Patent and Trademark Office, "the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art". In re Fritch, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (citing In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). "The Examiner can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references", In re Fritch, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992)(citing In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988)(citing In re Lalu, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)).

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest ALL the claim limitations. The teaching or

suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

This Court "reviews the ultimate legal determination of obviousness without deference", In re Dembiczak, 175 F.3d 994, 998, 50 USPQ 1614, 1616 (Fed. Cir. 1999); see also In re Zurko, 2001 U.S. App. LEXIS 17219 [\*10] (Fed. Cir. 2001). Further, this Court "reviews factual findings underlying the Board's determination for substantial evidence", In re Gartside, 203 F.3d at 1311-16, 53 USPQ2d at 1772-75 (Fed. Cir. 2000). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consol. Edison Co. v. NLRB, 305 U.S. 197, 229, 83 L. Ed. 126, 59 S. Ct. 206 (1938); see also Dickinson v. Zurko, 527 U.S. 150, 162, 50 USPQ2d at 1772-75 (1999)("Zurko III"); see also In re Zurko, 2001 U.S. App. LEXIS 17219 [\*10] (Fed. Cir. 2001).

Independent Claim 1 requires and positively recites, a **voice activated** Hypermedia system using grammatical metadata, said system comprising: "a **speech user agent**", "a network browsing module" and "an information resource located on a computer network wherein said **speech user agent facilitates voice**

**activation of said network browsing module to access said information resource”.**

Independent Claim 11 requires and positively recites, a **voice activated** Hypermedia system using grammatical metadata, said system comprising: “a **speech user agent**”, “a network browsing module”, “an information resource located on a computer network wherein said **speech user agent facilitates voice activation of said network browsing module to access said information resource**”, “a means for extracting a grammar from a hypermedia source on said information resource for future reference to said source”, “a means for modifying said grammar”, “a means for automatically producing an intelligent grammar from said information resource” and “a means for processing said grammar to produce a reference to said hypermedia”.

Independent Claim 14 requires and positively recites, a **voice activated** Hypermedia system using grammatical metadata, said system comprising: “a **speech user agent**”, “a browsing module”, “an information resource” and “a means for producing a grammar from textual representation of links to said information resource”.

1. Schmandt and Stefanopoulos do not teach, individually or combined, all of the limitations of Claims 1, 11 and 14.

The Examiner admits in the record that Stefanopoulos et al., "does not teach **a speech user agent**" (A51, line 9 (per Claim 1)); (A53, line 8 (per Claim 11)); (A54, line 16 (per Claim 14)). In an attempt to overcome Stefanopoulos' deficiency, the Examiner cites Schmandt as "teaching an interface that uses speech or voice to navigate in a windows environment" (A51, lines 10-11 (per Claim 1)); (A53, lines 9-10 (per Claim 11)); (page 6, lines 17-18 (per Claim 14)). However, while Schmandt discloses speech or voice to navigate in a windows environment, it fails to teach or suggest a "speech user AGENT". Nowhere in the record does the Examiner make the argument that Schmandt discloses "a speech user agent" (which it does not) or even that Schmandt's "use of speech or voice to navigate in a windows environment is somehow the same as a "speech user agent" (which it is not). Accordingly, Appellants' "**speech user agent**" is still missing from any combination of Stefanopoulos and Schmandt.

The speech user agent is the key piece of software in the subject invention that dynamically creates the vocabulary, grammar and actions that are possible for the user to use in a given situation. In the case of Web page browsing, the vocabulary and grammar are suitable for the specific Web page that is being



displayed at the moment, and the actions are the equivalent of “clicking” or selecting various items on the page, or of typing information into forms on the Web page. The actions taken will be those suitable for the expected actions on the specific Web page, usually, but not restricted to bringing up another Web page. As a new Web page is received, the agent dynamically creates a new vocabulary, grammar and actions based on the context of the new page. Thus the agent provides access to Web pages that may not have ever been seen before, and in fact can handle speech browsing of Web pages that may be dynamically generated at the Web server source “on-the-fly” (via CGI scripts).

Schmandt’s system, on the other hand, depends on a priori knowledge of the specific user context (in this case, navigating a windowing system). To be effective for arbitrary Web page browsing, Schmandt’s system would have to be pre-programmed with all possible vocabularies, grammars and actions for all possible Web pages. This was well beyond the state-of-the-art in speech recognition at the time of Appellants’ invention. Accordingly, there is no agent in Schmandt’s “use of speech or voice to navigate in a Windows environment” - there is a one to one mapping between what a user says and what Windows does. On the other hand, in Appellants’ invention there is an agent that intercedes between what a user says and the environment that changes the words that the user can use and

the grammar that the user can use them in depending upon the specific environment that a user is trying to control, which makes it generally applicable to any number of things.

By suitably tweaking Appellants' speech user agent, a user can use speech to navigate a web page that he has never seen before. In contrast, Schmandt's "use of speech or voice to navigate in a windows environment" is very targeted - when a user says "up" it means "go up in a windows sense". A big advantage of Appellants' invention is that a user is not tied to having to write a new speech system for each and every application. In the case of web browsing, Appellants' invention imbeds an agent that knows what grammars are allowable and what to say, which allows them to be different depending on which web page a user is looking at. In contrast, Schmandt's "use of speech or voice to navigate in a windows environment" CANNOT be used for arbitrary Web browsing because there is no way to say the link - more specifically, there is no agent to convert the link that a user says into the grammars and words that are required to say it.

Assuming, arguendo, that through some distorted reasoning one could equate Schmandt's "use of speech or voice to navigate in a windows environment" is somehow the same as a "speech user agent", we are still left with the problem

that Schmandt's speech or voice is used to navigate in a windows environment - NOT to "facilitate voice activation of a network browsing module to access an information resource located on a computer network", as taught by Appellants. Nowhere in the record does the Examiner, or the Board for that matter, describe how, assuming that what Schmandt teaches is equivalent to a speech user agent, Schmandt's speech user agent (which would be designed to navigate a windows environment) is to be reengineered to "facilitate voice activation of a network browsing module to access an information resource located on a computer network", as required by Claims 1, 11 and 14. To establish prima facie obviousness of a claimed invention, ALL the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

2. There is NO suggestion or motivation, either in the Schmandt and Stefanopoulos references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references or modify the resulting combination.

There is NO suggestion or motivation in either Stefanopoulos or Schmandt for a combination of the references or for any subsequent modification of such combination, and nowhere in the record does the Examiner and/or the Board argue that there is such suggestion or motivation. With no suggestion or motivation in the

references for such a combination, under In re Vaeck, there must be some suggestion or motivation, in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

The Examiner's stated grounds for combining Schmandt and Stefanopoulos is as follows:

It would have been obvious to one having ordinary skill in the art at the time the invention was made, to use the method of using a speech recognizer and processing the data to navigate in a windows environment as taught by Schmandt et al., and incorporating it into the hypermedia structured knowledge base system as taught by Stefanopoulos et al., to obtain a speech interface to the **Web that allows easy access to information on the Web by reducing manual, intervention [i.e., the use of keyboard], and which is user friendly** (A51, lines 12-17 (per Claim 1)); (A53, lines 13-19 (per Claim 11)); (A55, lines 1-7 (per Claim 14))(emphasis added).

The Examiner's above obviousness analysis is flawed for at least four reasons. First, Schmandt's "use of speech or voice to navigate in a windows environment" is not designed for use on the "Web" - it was designed to navigate a windows environment on an X windows server. Second, such access would not be "easy" since all of the locations would have to have been pre-identified and entered into a computer by the user implementing Schmandt's computer and voice templates would have to have been previously enrolled for the specific location(s) - which is not "easy". Third, Schmandt's "use of speech or voice to navigate in a windows

environment" does NOT **reduce manual, intervention [i.e., the use of keyboard]**, as suggested by the Examiner. Schmandt specifically discloses:

Speech **DOES NOT provide a keyboard substitute**, but it does assume some of the functions currently assigned to the **mouse**. Thus, a user can manage a number of windows **without removing his or her hands from the keyboard** (A152, column 1, lines 12-18)(emphasis added).

We surmised that allowing users to **remain focused on the screen and keyboard**, instead of fumbling for the mouse, would be beneficial in a workstation environment (A153, column 2, lines 4-8)(emphasis added).

Further, to set the record straight, Appellants respectfully point out that the Examiner NEVER equated a mouse (or mouse clicks) as being the same as a keyboard (or keyboard inputs) (see, A48-A59, and A93-A102) as suggested by the Board in its Decision on Appeal (A13, lines 4-6).

Fourth, there is no teaching or suggestion in Schmandt that would lead one of ordinary skill in the art at the time of the invention to make the determination that Schmandt's speech interface is "user friendly". Schmandt specifically discloses:

Speech proved to be **neither faster nor slower than the mouse**, although the choice of which medium to employ was in part related to what else the user was doing with his or her hands (A152, column 2, lines 3-7);

From our analysis of these empirical and observational data, we reached the following conclusion about our users' experiences with Xspeak:

- A) **Recognition is not straightforward** (A155, column 1, last line - column 2, line 4) including the problem that despite actions by Schmandt and his co-authors, **low recognition accuracy rates remained a problem** (A155, column 2, lines 21-22) and **"poor recognition accuracy was the greatest impediment** to acceptance of Xspeak (A155, column 2, lines 27-29);
- B) Some programmers preferred using a faster workstation without Xspeak to using a slower workstation with the speech interface (A155, column 2, line 30-column 3, line 2);
- C) For simple change-of-focus tasks (moving the mouse from one exposed window to another exposed window), **speech was not faster than the mouse**. In fact, it was marginally slower (A155, column 3, lines 8-12);
- D) Some users were **not helped much by the voice interface** (A155, column 3, lines 26-27);
- E) We (Schmandt et al.) found the use of voice in navigation **an incomplete substitute for the mouse**. Our users **did not rely on the speech interface to the exclusion of the mouse**. They **still had to use the pointer to interact with the direct-manipulation interfaces** within applications (A156, lines 6-12).

Accordingly, one of ordinary skill in the art would NOT (indeed could not) have assumed that a speech interface would be a **more user friendly** input than a keyboard. As a result, there is NO suggestion or motivation, in the knowledge generally available to one of ordinary skill in the art, to combine Schmandt and

Stefanopoulos or to modify the resulting combination. The Examiner's obviousness analysis is fatally flawed.

Even if, arguendo, all of the claims limitations were present, "obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, **absent some teaching or suggestion supporting the combination.** Under section 103, teachings of references can be combined **ONLY if there is some suggestion or incentive to do so."** ACS Hosp. Systems, Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious "modification" of the prior art. **The mere fact that the prior art may be modified in the manner suggested by the Examiner and the Board does not make the modification obvious unless the prior art suggested the desirability of the modification.** In re Gordon, 733 F.2d at 902, 221 USPQ at 1127. Moreover, **it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious.** In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed.Cir.1991). See also Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138, 227 USPQ 543, 547

(Fed.Cir.1985). The only purported motivation to combine the references to arrive at the invention of Claims 1, 11 and 14 comes from the Examiner - NOT the prior art.

3. There is NO reasonable expectation of success.

From the discussion in issue #2 above, there is no reasonable expectation that a combined Schmandt/Stefanopoulos apparatus will produce the apparatus described by the Examiner in his motivation for combination of the references, without improperly relying upon Appellants' disclosure. First, Schmandt's "use of speech or voice to navigate in a windows environment" is not designed for use on the "Web" - it was designed to navigate a windows environment on an X windows server. Second, such access would not be "easy" since all of the locations would have to have been pre-identified and entered into a computer by the user implementing Schmandt's computer and voice templates would have to have been previously enrolled for the specific location(s) - which is not "easy". Third, Schmandt's "use of speech or voice to navigate in a windows environment" does NOT **reduce manual, intervention [i.e., the use of keyboard]**, as suggested by the Examiner. Fourth, there is no teaching or suggestion in Schmandt that would lead one of ordinary skill in the art at the time of the invention to make the determination that Schmandt's speech interface is "user friendly".



Nevertheless, and in spite of the above, the Board affirmed the Examiner's rejection as follows:

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-19. Accordingly, we affirm (A11, lines 10-14).

In making the obviousness rejection, the Examiner, therefore, has pointed out the teachings of Stefanopoulos and Schmandt, has reasonably indicated the perceived differences between this applied prior art and the claimed invention, and has provided reasons as to how and why this prior art would have been modified and/or combined to arrive at the claimed invention (A12-A16). In our view, the Examiner's analysis is sufficiently reasonable that we find the Examiner has at least satisfied the burden of presenting a prima facie case of obviousness (A13, lines 7-16).

Appellants have set forth several arguments alleging error in our original decision, which sustained the Examiner's obviousness rejection. However, on reconsideration of our decision of February 28, 2001 in light of Appellants' comments in the Request for Rehearing, we find no error therein. We, therefore, decline to make any changes in our prior decision ... (A2, lines 5-11).

We nevertheless have reviewed our original decision and find no error in our finding of the obviousness to the skilled artisan of adding the speech interface techniques of Schmandt to the system of Stefanopoulos, nor in our reasoning which led to this conclusion. Our review of Schmandt did not overlook portions therein, as suggested by Appellants in the Request (A4, lines 5-11).

Appellants respectfully submit that the Board's findings are not supported by substantial evidence in the record. Using the three-step process for meeting the basic requirements of presenting a prima facie case of obviousness of In re Vaeck,

Appellants submit, first, that they have shown that there is no suggestion or motivation in either Stefanopoulos or Schmandt to be combined with each other or for such combination to be modified to include a "speech user agent" that "facilitates voice activation of a network browsing module to access an information resource located on a computer network". If there is any knowledge generally available to one of ordinary skill in the art that would suggest a modification of the Stefanopoulos or Schmandt and thereafter modify the resulting apparatus to include a "speech user agent" that "facilitates voice activation of a network browsing module to access an information resource located on a computer network", the Examiner (and the Board) failed to present any such evidence. Thus, the Board committed error in determining that first step of In re Vaeck had been met.

Second, the Board committed error in finding that the Examiner met the second step of the test for determining obviousness - that there must be a reasonable expectation of success. From the above discussions, Appellants have shown that one of ordinary skill in the art can only determine that there can be NO reasonable expectation of success of combining Schmandt's speech interface with Stefanopolous's apparatus to accomplish the Examiner's stated motivation "**to reduce the use of a keyboard, and to use a speech interface that is more user friendly than a keyboard**". Accordingly, the second step of In re Vaeck has not been met.

Third, the Board committed error in determining that the Examiner met the third step of the test for determining obviousness - the prior art reference (or references when combined -Schmandt and Stefanopoulos) must teach or suggest ALL the claim limitations. In addition to the Schmandt and Stefanopoulos failing to teach or suggest a "speech user agent" that "facilitates voice activation of a network browsing module to access an information resource located on a computer network", the Examiner admits (Office Action dated March 27, 1997 - the Final Rejection) that "Stefanopoulos et al., in view of Schmandt et al., teach the limitations as described in paper #4, paragraph #3, **EXCEPT for the newly added limitation of "...an information resource located on a computer network..."**". Accordingly, a combination of the Schmandt and Stefanopoulos references DOES NOT teach all of the limitations of Claim 1, 11 and 14.

Case law holds that all of the three steps must be present in the three-step process for meeting the basic requirements of presenting a prima facie case of obviousness. Appellants have shown that none of the above three steps was met by the Examiner. Accordingly, the Board committed error in determining that the Examiner had "at least satisfied the burden of presenting a prima facie case of obviousness" of Claims 1, 11 and 14. Being that the Board's findings are not

supported by substantial evidence in the record, Appellants respectfully request this Court to reverse the Decision of the Board.

Claims 2-4 depend directly or indirectly upon Claim 1. Appellants stated in their Appeal Brief that Claims 2-4 stand or fall with Claim 1. Accordingly, Claims 2-4 are allowable for the same reasons as Claim 1.

Dependent Claims 5-10 (and 12, 13 and 15-19 to the extent the Court has not already decided to reverse the rejection of independent Claims 11 and 14 upon which Claims 12, 13 and 15-19 depend) are allowable for the same reasons as independent Claims 1, 11 and 14. In addition, Appellants respectfully point out that the Examiner rejected Claims 5-19 without providing any "evidence" of the additional features of these claims. The only argument provided by the Examiner regarding these claims is that the additional feature(s) of each claim are obvious or inherent. Even the Board states:

We do not dispute Appellants' contention that the applied references do not explicitly disclose several of the various features of Claims 5-19; however, Appellants' minimal arguments do not address the Examiner's position of obviousness or inherency with respect to the features recited in these claims (A18, lines 3-8).

As to Appellants' argument (Request, pages 6-11) directed to the "grammar" related features appearing primarily in appealed claims 5-19,

we find no error in our finding that, when considering the entirety of the record in this application, the Examiner's line of reasoning was sufficient to shift the burden to Appellants to come forward with evidence to rebut the Examiner's position as to the inherency or obviousness of the claimed features (A6, lines 13-20).

With respect to the core factual findings regarding Claims 5-19, the Board cannot, as it has done in the present case, simply reach conclusion based on its own understanding or experience -- or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings. To hold otherwise would render the process of appellate review for substantial evidence on the record a meaningless exercise. Baltimore & Ohio R.R. v. Aderdeen & Rockfish R.R. Co., 393 U.S. 87, 91-92, 21 L. Ed. 2d 219, 89 S. Ct. 280 (1968)(rejecting a determination of the Interstate Commerce Commission with no support in the record, noting that if the Court were to conclude otherwise, "the requirement for administrative decisions based on substantial evidence and reasoned findings -- which alone make effective judicial review possible -- would become lost in the haze of so-called expertise). Accordingly, Appellants respectfully request this Court to reverse the Decision of the Board affirming the rejection of Claims 1-19.

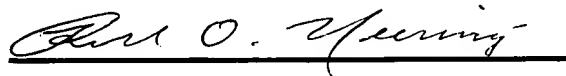
Appellants have set forth separate arguments for the allowability of Claims 11-19 in issues #1 and #2 above. Nevertheless, Appellants respectfully submit that the

arguments in support of the allowability of Claims 11-19 in issues #1 and #2 above can also be combined to support the allowance of Claims 11-19. Rather than repeat the arguments in their entirety, Appellants hereby incorporate and combine said arguments by reference.

### CONCLUSION

For the foregoing reasons, this Court should reverse the Decision of the Board holding Claims 1-19 obvious under 35 U.S.C. § 103 over a combination of Schmandt and Stefanopoulos.

Respectfully submitted,

A handwritten signature in cursive script, reading "Ronald O. Neerings", is written over a horizontal line.

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The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

MAILED

UNITED STATES PATENT AND TRADEMARK OFFICE

APR 24 2001

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte PHILIP R. THRIFT  
and CHARLES T. HEMPHILL

Appeal No. 1998-1109  
Application No. 08/419,229 *TI 20205*

ON BRIEF

Before JERRY SMITH, RUGGIERO, and HECKER, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellants request that we reconsider our decision of February 28, 2001 wherein we sustained the Examiner's rejection of claims 1-19 under 35 U.S.C. § 103.

In our previous decision, we determined that the Examiner, based on the combination of the Stefanopoulos and Schmandt references, had established a prima facie case of obviousness which had not been persuasively rebutted by convincing arguments

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of Appellants. In particular, we found that the Examiner's line of reasoning established proper motivation to the skilled artisan to incorporate the speech input and speech recognition techniques taught by Schmandt into the expert system of Stefanopoulos.

Appellants have set forth several arguments alleging error in our original decision which sustained the Examiner's obviousness rejection. However, on reconsideration of our decision of February 28, 2001 in light of Appellants' comments in the Request for Rehearing, we find no error therein. We, therefore, decline to make any changes in our prior decision for the reasons which follow.

Appellants now argue that the Examiner has failed to meet the three-pronged criteria (Request, page 2) for establishing a prima facie case of obviousness set forth in In re Vaeck, 947 F.2d 488, 492, 20 USPQ2d, 1438, 1442 (Fed. Cir. 1991). In the Brief on Appeal, however, Appellants specifically argued only the failure of the Examiner to establish proper motivation for the proposed combination of references, the first step in the asserted three-step process for establishing a prima facie case of obviousness. The second step, i.e., a reasonable expectation of success, was not argued by Appellants, and the third step requirement that the combined references must teach all the claim



limitations was argued only in general terms. It is a requirement of 37 CFR § 1.92 that Appellants submit arguments in the Brief(s) specifying all of the errors made by the Examiner in the rejection.

In any event, we found in our original decision that the Examiner set forth factual findings concerning the differences between the claimed invention and the applied prior art (Answer, pages 4-8), and clearly stated why it would have been obvious to the skilled artisan to combine the prior art references to arrive at the claimed invention. Rather than present any objective evidence of nonobviousness, Appellants chose instead to rely strictly on attorney argument in the Brief. We weighed the factual determinations made by the Examiner, and the arguments made by Appellants, and decided that the Examiner had reached the correct result.

Appellants' arguments in the Brief which attacked the Examiner's finding of motivation for the proposed combination of references primarily focused on the alleged lack of teaching of a network environment. Appellants now argue (Request, pages 3 and 4) that the Examiner's assertion of proper motivation for combining the prior art references must fail since neither of the

applied Stefanopoulos and Schmandt references suggests "accessing the Web" or that Schmandt's speech interface is "user friendly."

We note that neither of these arguments was made by Appellants in the Brief. An argument not timely made is an argument waived. We nevertheless have reviewed our original decision and find no error in our finding of the obviousness to the skilled artisan of adding the speech interface techniques of Schmandt to the system of Stefanopoulos, nor in our reasoning which led to this conclusion. Our review of Schmandt did not overlook portions therein, as suggested by Appellants in the Request, which indicated that not all users found the speech interface to be useful or efficient. We did not, and do not find, that the lack of positive experiences by some users of the speech interface of Schmandt would teach away from the Examiner's proposed combination, as implied by Appellants' arguments in the Request, when the entirety of Schmandt's disclosure is considered. It is improper to downgrade a reference on the basis that it teaches away, unless it teaches away in the context of the combination of references. In re Keller, 642 F. 2d 413, 425, 208 USPQ 871, 881 (CCPA 1981); In re Merck & Co., Inc., 800 F. 2d 1091, 1096, 231 USPQ 375, 380 (Fed. Cir. 1986).

As to Appellants' assertion of a lack of showing by the Examiner of a reasonable expectation of success for the combination of Stefanopoulos and Schmandt, we find, aside from its appearance for the first time in the Request, such assertion to be unpersuasive. Obviousness does not require absolute predictability. Despite some users less than positive experiences with the speech interface of Schmandt, the entirety of the disclosure of Schmandt would, in our view, lead to reasonable expectation of success when combining Schmandt's speech interface techniques with other system applications such as described in Stefanopoulos. While evidence showing there was no reasonable expectation of success may support a conclusion of nonobviousness, no such evidence aside from attorney arguments has been forthcoming from Appellants.

We further find Appellants assertion' (Request, page 12) that we affirmed the wrong 35 U.S.C. § 103 rejection to be misplaced. The 35 U.S.C. § 103 rejection before us on appeal, and which we affirmed, was the rejection of appealed claims 1-19 based on the combination of Stefanopoulos and Schmandt. The Examiner's statement of the grounds of rejection set forth in the final Office action mailed March 27, 1997, and repeated in the Answer, asserted the obviousness of all of the claim limitations

to the skilled artisan when considering the collective teachings of the applied references. We agreed with the Examiner that a clear logical inference drawn from Schmandt is that the disclosed multiple workstations would be routinely interconnected in a network to provide access to system software. "[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). We also point out that Appellants' Brief is completely silent as to any supposed "wrong" rejection being sent to the Board for decision.

As to Appellants' arguments (Request, pages 6-11) directed to the "grammar" related features appearing primarily in appealed claims 5-19, we find no error in our finding that, when considering the entirety of the record in this application, the Examiner's line of reasoning was sufficient to shift the burden to Appellants to come forward with evidence to rebut the Examiner's position as to the inherency or obviousness of the claimed features. We also find no error in our ultimate conclusion that Appellants' reliance solely on attorney arguments which merely repeated the language of the claims with a general

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assertion that the applied references do not suggest the claimed features was insufficient to overcome the Examiner's position. Arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F. 2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F. 3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

We have granted Appellants' request to the extent that we have reconsidered our decision of February 28, 2001, but we deny the request with respect to making any changes therein.

REHEARING/DENIED

*Jerry Smith*  
JERRY SMITH

JERRY SMITH  
Administrative Patent Judge

JOSEPH F. RUGGIE

JOSEPH F. RUGGIERO  
Administrative Patent Judge

Stuart H. Becker

STUART N. HECKER  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS  
AND  
INTERFERENCES

Appeal No. 1998-1109  
Application No. 08/419,229

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The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte PHILIP R. THRIFT  
and  
CHARLES T. HEMPHILL

Appeal No. 1998-1109  
Application No. 08/419,229

ON BRIEF

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FEB 23 2001

PAT & TM OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

T/ - 20205

REQ RECONSIDER 3/28/01  
APPEAL CASE 4/28/01

Before JERRY SMITH, RUGGIERO, and HECKER, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-19, all of the claims pending in the present application.

The claimed invention relates to a voice activated Hypermedia system using grammatical metadata and including a speech user agent, a network browsing module, and an information resource located on a computer network. The system includes

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embedded intelligence as a grammar which can be dynamically added to a speech recognizer. A further system feature provides for voice activated Hypermedia links and intelligent modules which process information from the information resources for allowing actions by the user.

Claim 1 is illustrative of the invention and reads as follows:

1. A voice activated Hypermedia system using grammatical metadata, said system comprising:

- a. a speech user agent;
- b. a network browsing module; and
- c. an information resource located on a computer network wherein said speech user agent facilitates voice activation of said network browsing module to access said information resource.

The Examiner relies on the following prior art:

Stefanopoulos et al. (Stefanopoulos) 5,333,237 Jul. 26, 1994

Schmandt et al. (Schmandt), "Augmenting a Window System with Speech Input," 23 Computer Magazine, No. 8, 50-56 (IEEE, August 1990).

Claims 1-19 stand finally rejected under 35 U.S.C. § 103 as being unpatentable over Stefanopoulos in view of Schmandt.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Brief (paper no. 11) and Answer (paper no. 12) for the respective details.



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Application No. 08/419,229

### OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Brief along with the Examiner's rationale in support of the rejections and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-19. Accordingly, we affirm.

Appellants indicate at page 3 of the Brief that claims 1-4 stand or fall together as a group while claims 5-19 stand separately. We will consider the appealed claims separately only to the extent that separate arguments are of record in this appeal. Dependent claims 2-4 have not been argued separately in the Brief and, accordingly, will stand or fall with their base

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claim. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983).

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1051-52, 189 USPQ 143, 147 (CCPA 1976).

With respect to independent claim 1, the Examiner, as the basis for the obviousness rejection, proposes to modify the disclosed Hypermedia structured expert system of Stefanopoulos which, in the Examiner's view, discloses the claimed invention except for the speech user agent. To address this deficiency, the Examiner turns to Schmandt which discloses the use of speech input to navigate through a multiple window based computer system

display. In the Examiner's analysis (Answer, pages 4-5), the skilled artisan would have been motivated and found it obvious to incorporate the speech input and speech recognition techniques taught by Schmandt into the expert system of Stefanopoulos in order to reduce the need for less user friendly manual keyboard and mouse click inputs.<sup>1</sup>

In making the obviousness rejection, the Examiner, therefore, has pointed out the teachings of Stefanopoulos and Schmandt, has reasonably indicated the perceived differences between this applied prior art and the claimed invention, and has provided reasons as to how and why this prior art would have been modified and/or combined to arrive at the claimed invention, (Answer, pages 4-8). In our view, the Examiner's analysis is sufficiently reasonable that we find that the Examiner has at least satisfied the burden of presenting a prima facie case, of obviousness. The burden is, therefore, upon Appellants to come forward with evidence or arguments which persuasively rebut the

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<sup>1</sup>The statement of the grounds of rejection at page 4 of the Answer refers back to the Office action mailed August 7, 1996, paper no. 4, which provides a detailed analysis of the Examiner's position.

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Application No. 08/419,229

Examiner's prima facie case of obviousness. Arguments which Appellants could have made but elected not to make in the Briefs have not been considered in this decision (note 37 CFR § 1.192).

In response, Appellants' initial argument (Brief, pages 6 and 7) attacks the Examiner's assertion that the applied references relate to a network environment. In particular, Appellants question the Examiner's citation of the passage at column 2, paragraph 3 of Schmandt as supporting disclosure of a network application. In Appellants' view, this passage only supports the proposition that the X-Windows system is widely used in workstations, not that the workstations are connected into a network.

After reviewing the Schmandt reference in light of Appellants' arguments, we agree that the particular passage cited by the Examiner is perhaps not the best portion of Schmandt's disclosure to support the Examiner's position. In our view, however, other portions of Schmandt's disclosure clearly support Schmandt's contemplation of a network application. For example, in the immediately succeeding paragraph after the cited passage, Schmandt refers to a client-server architecture which is illustrated in Schmandt's Figures 1 and 5 and which the skilled artisan would recognize as referring to a computer network

installation. Further, notwithstanding whether Schmandt actually uses the term "network," we agree with the Examiner's comment at page 4 of the Answer that one of ordinary skill would recognize that the multiple workstations discussed by Schmandt would be routinely interconnected to provide access to system software.

In addition, besides our comments directed to Schmandt's disclosure of a network environment, we also find disclosure in Stefanopoulos to support network architecture. The Abstract of Stefanopoulos sets forth the following:

Each active and passive electronic document includes active document transfer means that provide for transfer from the active document to another active document, a passive document, or a knowledge base linked thereto. The expert system, and the active and passive documents may also include knowledge base transfer means provided on the display that include selectable areas that provide access to additional linked expert systems [emphasis added].

Appellants' arguments (Brief, page 7) further emphasize the network environment aspects of their system by asserting that their system involves "accessing remote data across a network" or that their invention is concerned with "improving the ease of using a complex database such as the internet." In our opinion, however, such arguments are not commensurate with the scope of the claims. It is axiomatic that, in proceedings before the PTO,

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claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). Moreover, limitations are not to be read into the claims from the specification. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993), citing In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Our review of the language of the appealed claims reveals only a recitation of a "computer network" with no recitation of any remote accessing of a database or any limitation as to database complexity or the internet. It is apparent to us that, whatever Appellants' intentions are with regard to claiming the specific accessing of a particular type of database, these intentions are clearly not realized in the language of the present appealed claims.

For all of the above reasons, since it is our opinion that the Examiner's prima facie case of obviousness has not been overcome by any convincing arguments from Appellants, the Examiner's 35 U.S.C. § 103 rejection of independent claim 1, as well as claims 2-4 which fall with claim 1, is sustained.

Turning to a consideration of the Examiner's obviousness rejection of claims 5-19, separately discussed by Appellants in the Brief, we sustain the 35 U.S.C. § 103 rejection of these claims as well. We note initially that independent claims 11 and 14 are similar to independent claim 1 discussed supra, but add limitations directed to the construction and extraction of grammar related features as part of the speech user agent. Dependent claims 5-10, 12, 13, and 15-19 primarily delineate further speech recognition grammar construction and extraction features.

The Examiner at pages 6-8 of the Answer, and at pages 3-7 of the Office action mailed August 7, 1996, paper no. 4, referenced in the Examiner's statement of the grounds of rejection, addresses the language of these claims and provides a line of reasoning for asserting the obviousness or inherent nature of each of the claimed features. In our view, the Examiner's reasoning is sufficient to shift the burden to Appellants to come forward with evidence and/or arguments to rebut the Examiner's position.

The extent of Appellants' arguments in response (Brief, pages 8-13), however, is to briefly summarize their interpretation of the applied Stefanopoulos and Schmandt

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references, essentially repeat the language of claims 5-19, and draw the general conclusion that the applied references do not suggest the claimed features. We do not dispute Appellants' contention that the applied references do not explicitly disclose several of the various features of claims 5-19; however, Appellants' minimal arguments do not address the Examiner's position of obviousness or inherency with respect to the features recited in these claims.

In conclusion, we have sustained the Examiner's 35 U.S.C. § 103 rejection of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-19 is affirmed.



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Application No. 08/419,229

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

*Jerry Smith*  
JERRY SMITH

JERRY SMITH  
Administrative Patent Judge.

JOSEPH F. RUGGIE

JOSEPH F. RUGGIERO  
Administrative Patent Judge

Stuart N. Hecker

STUART N. HECKER  
Administrative Patent Judge

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## INTERFERENCES

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Appeal No. 1998-1109  
Application No. 08/419,229

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UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT  
Appeal No. 01-1445

AFFIDAVIT OF  
SERVICE  
BY MAIL

-----X  
IN RE PHILIP R. THRIFT and  
CHARLES T. HEMPHILL

-----X  
STATE OF TEXAS )  
 ) ss.:  
COUNTY OF DALLAS )

I, Ronald O. Neerings, being duly sworn according to law, and over the age of 18, upon my oath depose and say that:

I am retained by TEXAS INSTRUMENTS INCORPORATED

as attorney for the APPELLANTS

That on the SEVENTH day of SEPTEMBER, 2001, I served the within  
CORRECTED BRIEF FOR APPELLANTS

In the above captioned matter upon

JOSEPH C. PICCOLO

OFFICE OF THE SOLICITOR

P. O. BOX 15667

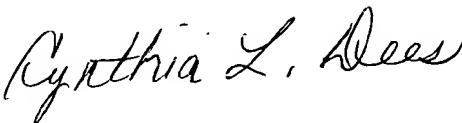
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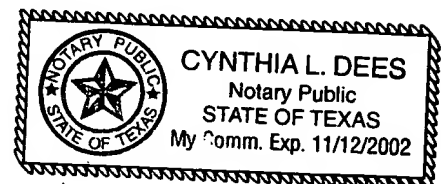
by depositing TWO true copy(ies) of the same enclosed in a post-paid, properly  
addressed wrapper, in an official depository maintained by the United States Postal  
Service.

  
Ronald O. Neerings

Sworn to and subscribed  
Before me this 21<sup>th</sup> day  
of SEPTEMBER, 2001

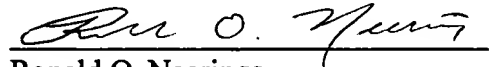


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CERTIFICATE OF COMPLIANCE UNDER FED. R. APP.P. 32(A)(7)

I certify under Fed. R. App. P. 32(a)(7) that this brief is proportionately spaced, has a typeface of 14 points, and contains 13,052 words according to the word count of the word-processing system used to prepare this brief.

A handwritten signature in dark ink, appearing to read "Ron O. Neerings", is written over a horizontal line.

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